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Constitution of Delaware; 1776 (1)

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The Constitution, or System of Government, agreed to and resolved upon by the Representatives in full Convention of the Delaware State, formerly styled "The Government of the Counties of New Castle, Kent, and Sussex, upon Delaware," the said Representatives being chosen by the Freemen of the said State for that express Purpose.

ARTICLE 1. The government of the counties of New- Castle, Kent and Sussex, upon Delaware, shall hereafter in all public and other writings be called The Delaware State.

ART. 2. The Legislature shall be formed of two distinct branches; they shall meet once or oftener in every year, and shall be called, " The General Assembly of Delaware."

ART. 3. One of the branches of- the Legislature shall be called, " The House of Assembly," and shall consist of seven Representatives to be chosen for each county annually of such persons as are freeholders of the same.

ART. 4.4 The other branch shall be called " The council," and consist of nine members; three to be chosen for each county at the time of the first election of the assembly, who shall be freeholders of the county for which they are chosen, and be upwards of twenty-five years of age. At the end of one year after the general election, the councillor who had the smallest number of votes in each county shall be displaced, and the vacancies thereby occasioned supplied by the freemen of each county choosing the same or another person at a new election in manner aforesaid. At the end of two years after the first general election, the councillor who stood second in number of votes in each county shall be displaced, and the vacancies thereby occasioned supplied by a new election in manner aforesaid. And at the end of three years from the first general election, the councillor who had the greatest number of votes in each county shall be displaced, and the vacancies thereby occasioned supplied by a new election in manner aforesaid. And this rotation of a councillor being displaced at the end of three years in each county, and his office supplied by a new choice, shall be continued afterwards in due order annually forever, whereby, after the first general election, a councillor will remain in trust for three years from the time of his being elected, and a councillor will be displaced, and the same or another chosen in each county at every election.

ART. 5. The right of suffrage in the election of members for both houses shall remain as exercised by law at present; and each house shall choose its own speaker, appoint its own officers, judge of the qualifications and elections of its own members, settle its own rules of proceedings, and direct writs of election for supplying intermediate vacancies. They may also severally expel any of their own members for misbehavior, but not a second time in the same sessions for the same offence, if reelected; and they shall have all other powers necessary for the legislature of a free and independent State.

ART. 6. All money-bills for the support of government shall originate in the house of assembly, and may be altered, amended, or rejected by the legislative council. All other bills and ordinances may take rise in the house of assembly or legislative council, and may be altered, amended, or rejected by either.

ART. 7. A president or chief magistrate shall be chosen by joint ballot of both houses' to be taken in the house of assembly, and the box examined by the speakers of each house in the presence of the other members, and in case the numbers for the two highest in votes should be equal, then the speaker of the council shall have an additional casting voice, and the appointment of the person who has the majority of votes shall be entered at large on the minutes and journals of each house, and a copy thereof on parchment, certified and signed by the speakers respectively, and sealed with the great seal of the State, which they are hereby authorized to affix, shall be delivered to the person so chosen president, who shall continue in that office three years, and until the sitting of the next general assembly and no longer, nor be eligible until the expiration of three years after he shall have been out of that office. An adequate but moderate salary shall be settled on him during his continuance in office. He may draw for such sums of money as shall be appropriated by the general assembly, and be accountable to them for the same; he may, by and with the advice of the privy council, lay embargoes or prohibit the exportation of any commodity for any time not exceeding thirty days in the recess of the general assembly; he shall have the power of granting pardons or reprieves, except where the prosecution shall be carried on by the house of assembly, or the law shall otherwise direct, in which cases no pardon or reprieve shall be granted, but by a resolve of the house of assembly, and may exercise all the other executive powers of government' limited and restrained as by this constitution is mentioned, and according to the laws of the State. And on his death, inability, or absence from the State, the speaker of the legislative council for the time being shall be vice-president, and in case of his death, inability, or absence from the State, the speaker of the house of assembly shall have the powers of a president, until a new nomination is made by the general assembly.

ART. 8. A privy council, consisting of four members, shall be chosen by ballot, two by the legislative council and two by the house of assembly: *Provided*, That no regular officer of the army or navy in the service and pay of the continent, or of this, or of any other State, shall be eligible; and a member of the legislative council or of the house of assembly being chosen of the privy council, and accepting thereof, shall thereby lose his seat. Three members shall be a quorum, and their advice and proceedings shall be entered of record, and signed by the members present, (to any part of which any member may enter his dissent,) to be laid before the general assembly when called for by them. Two members shall be removed by ballot, one by the legislative council and one by the house of assembly, at the end of two years, and those who remain the next year after, who shall severally be ineligible for the three next years. The vacancies, as well as those occasioned by death or incapacity, shall be supplied by new elections in the same manner; and this rotation of a privy councillor shall be continued afterwards in due order annually forever. The president may by summons convene the privy council at any time when the public exigencies may require, and at such place as he shall think most convenient, when and where they are to attend accordingly.

ART. 9. The president, with the advice and consent of the privy council, may embody the militia, and act as captain-general and commander-in-chief of them, and the other military force of this State, under the laws of the same.

ART. 10. Either house of the General assembly may adjourn themselves respectively. The president shall not prorogue, adjourn, or dissolve the general assembly, but he may, with the advice of the privy council, or on the application of a majority of either house, call them before the time they shall stand adjourned; and the two houses shall always sit at the same time and place, for which purpose immediately after every adjournment the speaker of the house of assembly shall give notice to the speaker of the other house of the time to which the house of assembly stands adjourned.

ART. 11. The Delegates for Delaware to the Congress of the United States of America shall be chosen annually, or superseded in the mean time, by joint ballot of both houses in the general assembly.

ART. 12. The president and general assembly shall by joint ballot appoint three justices of the supreme court for the State, one of whom shall be chief justice, and a judge of admiralty, and also four justices of the courts of common pleas and orphans' courts for each county, one of whom in each court shall be styled "*chief justice*," (and in case of division on the Ballot the president shall have an additional casting voice,) to be commissioned by the president under the great seal, who shall continue in office during good behavior; and during the time the justices of the said supreme court and courts of common pleas remain in office, they shall hold none other except in the militia. Any one of the justices of either of said courts shall have power, in case of the noncoming of his brethren, to open and adjourn the court. An adequate fixed but moderate salary shall be settled on them during their continuance in office. The president and privy council shall appoint the secretary, the attorney-general, registers for the probate of wills and granting letters of administration, registers in chancery, clerks of the courts of common pleas and orphans' courts, and clerks of the peace, who shall be commissioned as aforesaid, and remain in office during five years, if they behave themselves well; during which time the said registers in chancery and clerks shall not be justices of either of the said courts of which they are officers, but they shall have authority to sign all writs by them issued, and take recognizances of bail. The justices of the peace shall be nominated by the house of assembly; that is to say, they shall name twenty-four persons for each county, of whom the president, with the approbation of the privy council, shall appoint twelve, who shall be commissioned as aforesaid, and continue in office during seven years, if they behave themselves well; and in case of vacancies, or if the legislature shall think proper to increase the number, they shall be nominated and appointed in like manner. The members of the legislative and privy councils shall be justices of the peace for the whole State, during their continuance in trust; and the justices of the courts of common pleas shall be conservators of the peace in their respective counties.

ART. 13. The justices of the courts of common pleas and orphans courts shall have the power of holding inferior courts of chancery, as heretofore, unless the legislature shall otherwise direct.

ART. 14. The clerks of the supreme court shall be appointed by the chief justice thereof, and the recorders of deeds, by the justices of the courts of common pleas for each county severally, and commissioned by the president, under the great seal, and continue in office five years, if they behave themselves well.

ART. 15. The sheriffs and coroners of the respective counties shall be chosen annually, as heretofore; and any person, having served three years as sheriff, shall be ineligible for three years after; and the president and privy council shall have the appointment of such of the two candidates, returned for said offices of sheriff and coroner, as they shall think best qualified, in the same manner that the governor heretofore enjoyed this power.

ART. 16. The general assembly, by joint ballots shall appoint the generals and field-officers, and all other officers in the army or navy of this State; and the president may appoint, during pleasure, until otherwise directed by the legislature, all necessary civil officers not hereinbefore mentioned.

ART. 17. There shall be an appeal from the supreme court of Delaware, in matters of law and equity, to a court of seven persons, to consist of the president for the time being, who shall preside therein, and six others, to be appointed, three by the legislative council, and three by the house of assembly, who shall continue in office during good behavior, and be commissioned by the president, under the great seal; which court shall be styled the "court of appeals," and have all the authority and powers heretofore given by law in the last resort to the King in council, under the old government. The secretary shall be the clerk of this court; and vacancies therein occasioned by death or incapacity, shall be supplied by new elections, in manner . aforesaid.

ART. 18. The justices of the supreme court and courts of common pleas, the members of the privy council, the secretary, the trustees of the loan office, and clerks of the court of common pleas, during their continuance in office, and all persons concerned in any army or navy contracts, shall be ineligible to either house of assembly; and any member of either house accepting of any other of the offices herein before mentioned (excepting the office of a justice of the peace) shall have his seat thereby vacated, and a new election shall be ordered.

ART. 19. The legislative council and assembly shall have the power of making the great seal of this State, which shall be kept by the president, or, in his absence, by the vice-president, to be used by them as occasion may require. It shall be called "*The Great Seal of the Delaware State*," and shall be affixed to all laws and commissions.

ART. 20. Commissions shall run in the name of "The Delaware State," and bear test by the president Writs shall run in the same manner, and bear test in the name of the chief-justice, or justice first named in the commissions for the several courts, and be sealed with the public seals of such courts. Indictments shall conclude, "*Against the peace and dignity of the State.*"

ART. 21. In case of vacancy of the offices above directed to be filled by the president and general assembly, the president and privy council may appoint others in their stead until there shall be a new election.

ART. 22. Every person who shall be chosen a member of either house, or appointed to any office or place of trust, before taking his seat, or entering upon the execution of his office, shall take the following oath, or affirmation, if conscientiously scrupulous of taking an oath, to wit:

"I, A. B. will bear true allegiance to the Delaware State, submit to its constitution and laws, and do no act wittingly whereby the freedom thereof may be prejudiced."

And also make and subscribe the following declaration, to wit:

"I, A. B. do profess faith in God the Father, and in Jesus Christ His only Son, and in the Holy Ghost, one God, blessed for evermore; and I do acknowledge the holy scriptures of the Old and New Testament to be given by divine inspiration."

And all officers shall also take an oath of office.

ART. 23. The president, when he is out of office, and within eighteen months after, and all others offending against the State, either by maladministration, corruption, or other means, by which the safety of the Commonwealth may be endangered, within eighteen months after the offence committed, shall be impeachable by the house of assembly before the legislative council; such impeachment to be prosecuted by the attorney-general, or such other person or persons as the house of assembly may appoint, according to the laws of the land. If found guilty, he or they shall be either forever disabled to hold any office under government, or removed from office *pro tempore*, or subjected to such pains and penalties as the laws shall direct. And all officers shall be removed on conviction of misbehavior at common law, or on impeachment, or upon the address of the general assembly.

ART. 24. All acts of assembly in force in this State on the 15th day of May last (and not hereby altered, or contrary to the resolutions of Congress or of the late house of assembly of this State) shall so continue, until altered or repealed by the legislature of this State, unless where they are temporary, in which case they shall expire at the times respectively limited for their duration.

ART. 25. The common law of England, as-well as so much of the statute law as has been heretofore adopted in practice in this State, shall remain in force, unless they shall be altered by a future law of the legislature; such parts only excepted as are repugnant to the rights and privileges contained in this constitution, and the declaration of rights, &c., agreed to by this convention.

ART. 26. No person hereafter imported into this State from Africa ought to be held in slavery under any presence whatever; and no negro, Indian, or mulatto slave ought to be brought into this State, for sale, from any part of the world.

ART. 27. The first election for the general assembly of this State shall be held on the List day of October next, at the court-houses in the several counties, in the manner heretofore used in the election of the assembly, except as to the choice of inspectors and assessors, where assessors have not been chosen on the 16th day of September, instant, which shall be made on the morning of the day of election, by the electors, inhabitants of the respective hundreds in each county. At which time the sheriffs and coroners, for the said counties respectively, are to be elected; and the present sheriffs of the counties of Newcastle and Kent may be rechosen to that office until the 1st day of October, A. D. 1779; and the present sheriff for the county of Sussex may be rechosen to that office until the 1st day of October, A. D. 1778, provided the freemen think proper to reelect them at every general election; and the present sheriffs and coroners, respectively, shall continue to exercise their offices as heretofore, until the sheriffs and coroners, to be elected on the said 21st day of October, shall be commissioned and sworn into office. The members of the

legislative council and assembly shall meet, for transacting the business of the State, on the 28th day of October next, and continue in office until the 1st day of October, which will be in the year 1777; on which day, and on the 1st day of October in each year forever after, the legislative council, assembly, sheriffs, and coroners shall be chosen by ballot, in manner directed by the several laws of this State, for regulating elections of members of assembly and sheriffs and coroners; and the general assembly shall meet on the 20th day of the same month for the transacting the business of the State; and if any of the said 1st and 20th days of October should be Sunday, then, and in such case, the elections shall be held, and the general assembly meet, the next day following.

ART. 28. To prevent any violence or force being used at the said elections, no person shall come armed to any of them, and no muster of the militia shall be made on that day; nor shall any battalion or company give in their votes immediately succeeding each other, if any other voter, who offers to vote, objects thereto; nor shall any battalion or company, in the pay of the continent, or of this or any other State, be suffered to remain at the time and place of holding the said elections, nor within one mile of the said places respectively, for twenty-four hours before the opening said elections, nor within twenty-four hours after the same are closed, so as in any manner to impede the freely and conveniently carrying on the said election: *Provided always*, That every elector may, in a peaceable and orderly manner, give in his vote on the said day of election.

ART. 29. There shall be no establishment of any one religious sect in this State in preference to another; and no clergyman or preacher of the gospel, of any denomination, shall be capable of holding any civil office in this State, or of being a member of either of the branches of the legislature, while they continue in the exercise of the pastoral function.

ART. 30. No article of the declaration of rights and fundamental rules of this State, agreed to by this convention, nor the first, second, fifth, (except that part thereof that relates to the right of suffrage,) twenty-sixth, and twenty-ninth articles of this constitution, ought ever to be violated on any pretence whatever. No other part of this constitution shall be altered, changed, or diminished without the consent of five parts in seven of the assembly, and seven members of the legislative council.

GEORGE READ, President.

Attest:

JAMES BOOTH, Secretary. - Friday, September 10, 1776.

(1) Verified from " The Constitutions of the Several Independent States of America, Published by order of Congress, Boston: Printed by Norman and Bowen, 1785."

This constitution was framed by a Convention which assembled at New Castle, August 27, 1776, in accordance with the recommendation of the Continental Congress that the people of the Colonies should form independent State Governments. It was not submitted to the people but was proclaimed September 21, 1776.

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Source:
The Federal and State Constitutions Colonial Charters, and Other Organic Laws of the States, Territories, and Colonies Now or Heretofore Forming the United States of America
Compiled and Edited Under the Act of Congress of June 30, 1906 by Francis Newton Thorpe
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